



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 27, 1994

Ms. Karen Hendershot Bailey  
Assistant City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR94-221

Dear Ms. Bailey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24781.

The City of Victoria (the "city") received two open records requests for a copy of a report of an independent investigation conducted on behalf of the city regarding alleged acts of retaliation against a city employee for filing charges of sexual harassment and discrimination. You contend that portions of the report come under the protection of the attorney-client privilege as well as section 552.111 of the Government Code.

Although you raise the attorney-client privilege in the context of section 552.101 of the Government Code, this privilege is more properly deemed to be an aspect of section 552.107(1), which protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* This office agrees that much of the information in the report that you have marked constitutes legal advice that the city may withhold pursuant to the attorney-client privilege. We have marked those portions that the city may withhold under this exception.

However, most of the information you have marked on pages 13 and 14 of the report consists of purely factual information that does not constitute either an attorney's legal advice or the substance of a privileged communication for purposes of section

552.107(1). Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. *Id.* To the extent that the information you have marked on pages 13 and 14 is purely factual in nature, this exception is inapplicable here. Consequently, the city may withhold only those portions of the report that we have marked as coming under the protection of section 552.107(1); the city must release all remaining portions of the report at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Loretta R. DeHay".

Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref.: ID# 24781

Enclosures: Marked documents

cc: Mr. David Tewes  
311 E. Constitution  
Victoria, Texas 77901  
(w/o enclosures)

Ms. Holly Sulak  
3808 N. Navarro  
Victoria, Texas 77901  
(w/o enclosures)